

MAY 18 1986

JOSEPH E. DANIEL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

FRANK G. BURKE, ACTING ARCHIVIST OF THE
UNITED STATES, AND RONALD GEISLER, EXECUTIVE CLERK
OF THE WHITE HOUSE, PETITIONERS

v.

MICHAEL D. BARNES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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84-5155

GENERAL DOCKET

84-5155

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

APPEAL FROM THE DISTRICT COURT

See 84-5013
84-5014

Michael D. Barnes, individually/
member; U.S. House of Representa-
tives, et al., and

United States Senate, et al.,

Appellants

v.

Rav Kline
~~Gerald P. Barnes~~, individually and
in his capacity as Administrator,
General Services Administration, et al.

Popular Name:

Number of Case/Order Below: CA 84-00020

Case Type: CV.US.

JS-34: Yes ☒ No ☐

Judge Below: Jackson (9058)

Date of Judg./Order: 03-12-84

USDC Offense/Nature of Suit Code: 2890

Date Docketed: 03-16-84

Date Filed in Dist. Court: 01-04-84

Notice of Appeal Filed: 03-14-84

U.S. Mag:

☐ Direct

☐ Indirect

FINANCIAL

USA

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

84-3155

84-3155

DATE

FILINGS — PROCEEDINGS

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84-5155

REMARK

84-5155

DATE	FILINGS — PROCEEDINGS
(B)03-16-84 (B)03-16-84	Copy of notice of appeal and docket entries from Clerk, DC (n-5) Docketing statements were mailed to counsel for appellants (Mailed to Esqs. Ross Davidson & Ratner)
(J)03-16-84 (J)03-16-84 (V)03-23-84	4-Appellants' joint motion to expedite (p-16) 4-Appellees' response to appellants motion to expedite (m-16) Per curiam order that the motion to expedite is denied; and that the Clerk is directed to schedule this case for oral argument during this Court's September 1984 sitting period. The following briefing schedule shall apply: Appellants' brief and appendix - 05/04/84; Intervenor's brief - 05/14/84; Appellees' brief 06/18/84; Appellants' reply brief, - 07/06/84; Wright and Edwards, CJs and SCJ Bazelon (Circuit Judge Wright did not participate in this order)
(J)03-23-84 (J)03-23-84 (J)04-03-84 (V)04-10-84	4-Appellants' (Michael D. Barnes, et al.) docketing statement (m-20) 4-Appellant's (U.S. Senate) docketing statement (m-21) 15-Appellants' suggestion for rehearing en banc of 03-23-84 order (m-30) Per curiam order that reconsideration is granted and the Clerk is directed to expediate this case and schedule it for oral argument during the May-June calendar; and that the following briefing schedule shall apply: Appellants' brief and appendix shall be personally served and filed by the close of business - 04/18/84; Appellants' answering brief shall be personally served and filed by the close of business - 05/18/84; Appellants' reply brief shall be personally served and filed by the close of business - 05/28/84. No enlargement of the foregoing briefing schedule will be granted absent extraordinary and compelling reasons; Wright (who did not participate) and Edwards, CJs and SCJ Bazelon
(J)04-18-84 (J)04-18-84 (J)04-18-84 (J)05-18-84 (V)05-22-84	15-Appellants' (Speaker of the House, et al.) brief (p-18) 15-Appellants' (Senate) brief (p-18) 7-Joint appendix (p-18) 15-Appellees' brief (p-18) (m-18) Clerk's order, sua sponte, that the following times are allotted for oral argument Appellants - 15 minutes; Appellees - 15 minutes. Only one counsel per side will be allowed to argue
(J)05-29-84 (J)05-29-84 (V)06-04-84 (J)07-17-84 (V)07-31-84	15-Appellants' (Speaker of the House, et al.) brief (p-25) 15-Appellants' (Senate) brief (p-29) ARGUED before CJ Robinson, Bork, CJ and SCJ McGowan 4-Appellants' motion for leave to file supplemental brief (p-17) Per curiam order that the motion for leave to file supplemental brief is granted and the Clerk is directed to file appellants' lodged supplemental brief and to enter same on the docket; CJ Robinson, Bork, CJ and SCJ McGowan
(V)07-31-84 (D)08-29-84	15-Appellants' supplemental brief (p-17) Judgment by this Court that the judgment of the District Court granting summary judgment to appellees is hereby reversed and the case remanded to the District Court with instructions that summary judgment be entered for appellants and appellant-intervenors. Bork, CJ, dissents on the ground that neither appellants nor appellant-intervenors have standing to bring this action. The mandate herein shall issue forthwith. Opinion of the court to follow.
(I)08-29-84 (J)08-29-84 (J)09-28-84	MANDATE ISSUED. 4-Letter from counsel for appellants advising of additional authorities pursuant to FRAP 28(j) (m-28) 15-Appellees' petition for rehearing and suggestion for rehearing en banc (m-28)

SEE NEXT PAGE

81-5155

GENERAL DOCKET

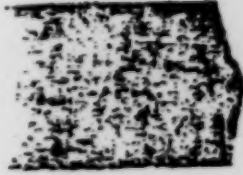
81-5155

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

81-5155

84-5155

DATE	FILINGS — PROCEEDINGS
(V)10-09-84	Per curiam order that appellees are granted leave to file a supplemental petition for rehearing and suggestion for rehearing en banc no later than 21 days after issuance of the Opinion of the Court; CJ Robinson, Bork, CJ and SCJ McGowan.
(D)04-12-85	Opinion for the Court filed by Senior Circuit Judge McGowan.
(D)04-12-85	Separate dissenting opinion filed by Circuit Judge Bork.
(D)04-12-85	Per Curiam order, sua sponte, that the Opinion for the Court filed by Senior Circuit Judge McGowan on April 12, 1985 and the Separate Dissenting Opinion filed by Circuit Judge Bork be, and hereby are amended. (SEE ORDER FOR DETAILS).
(R)04-25-85	4-Appellees' motion to extend time to file a supplemental petition for rehearing with suggestion for rehearing en banc (m-25) [1]
(E)05-03-85	Per curiam order that appellees' motion to extend time to file a supplemental petition for rehearing with suggestion for rehearing en banc is granted, and the time for filing appellees' supplemental petition for rehearing with suggestion for rehearing en banc is extended to and including May 17, 1985. CJ Robinson, Bork, CJ, and McGowan, SCJ.
(R)05-17-85	25-Appellees' supplemental petition for rehearing with suggestion for rehearing en banc (m-17) [1]
(E)06-04-85	Per curiam order that appellants are directed to file with the Court within two weeks from the date of this order briefs in response to appellee-petitioners' suggestion, in the Supplemental Petition for Rehearing with Suggestion for Rehearing En Banc filed by appellees on May 17, 1985, that this case is now moot and the judgment and opinion should accordingly be vacated. (See order for details.) Appellee-petitioners may file a supplemental brief with the Court within two weeks of the date of issuance of this order, addressing the issues specified in this order. The parties are directed to submit 25 copies of each brief filed. CJ Robinson, Bork, CJ, and McGowan.
(R)06-18-85	25-Appellees' (DOJ) supplemental brief (m-18) [1]
(R)06-18-85	25-Appellants' (Senate) supplemental brief (p-18) [1]
(R)06-18-85	25-Appellants' (Speaker & Bipartisan Leadership Group) supplemental brief (m-18) [1]
(T)08-07-85	Per Curiam order denying appellees' petition for rehearing; CJ Robinson, Bork, CJ (who would grant rehearing) and McGowan, SCJ
(T)08-07-85	Per Curiam order, en banc, denying appellees' suggestion for rehearing en banc; CJ Robinson; Wright, Tamm, Wald, Mikva, Edwards, Ginsburg, Bork, Scalia and Starr, CJs (Circuit Judges Bork, Scalia and Starr would grant the suggestion) Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed on November 5, 1985 in SC No. 85-781.
(E)11-18-85	Oral Argument Transcript
(E)12-30-85	TRANSCRIPT OF ORAL ARGUMENT
(J)01-15-86	Certified copy of order from Clerk, Supreme Court granting the petition for writ of certiorari in SC No. 85-781 on March 3, 1986 [1]
(H)03-07-86	Per curiam order that the mandate of the Court issued on August 29, 1984 be recalled. The Clerk of the District Court is requested to return the mandate as promptly as the business of his office permits. CJ Robinson, Bork, CJ, and McGowan, SCJ.
(E)04-03-86	



DATE	FILINGS — PROCEEDINGS
(T)04-07-86	4-Letter from Clerk, SC requesting certification and transmittal of original record [1]
(T)04-18-86 (E)04-22-86	MANDATE RETURNED [1] Clerk's order directing the Clerk of the District Court to compile and certify to this Court the record before the District Court, and do so as promptly as the business of his office permits.
(T)04-21-86 (T)04-23-86 (T)04-29-86	Letter from #1 to Clerk, SC, transmitting a partial record Receipt dated 4/23/86 from Clerk, SC acknowledging receipt for partial record CERTIFIED ORIGINAL RECORD (2 volumes); 2 volumes of transcript under separate cover [1]

84-5014

GENERAL DOCKET

84-5014

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

APPEAL FROM THE DISTRICT COURT

84-5135
Ser 84-5013

Michael D. Barnes, individually/
member; U.S. House of Representa-
tives, et al.,

Appellants

v.

Gerald P. Carmen, individually and
in his capacity as Administrator,
General Services Administration, et al.

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Popular Name:

Number of Case/Order Below: C.A. 84-00020

Case Type: CV.US

IS-34:

Yes ☒No ☐

Judge Below: Jackson (9058)

Date of Judg./Order: 01-09-84

USDC Offense/Nature of Suit Code:

Date Docketed: 01-11-84

Date Filed in Dist. Court: 01-04-84

Notice of Appeal Filed: 01-11-84

U.S. Mag:

☐ Direct☐ Indirect

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84-5014

REMARKS

84-5014

DATE	FILINGS — PROCEEDINGS
(G)01-11-84 (G)01-11-84	Copy of Notice of Appeal and Docket Entries from Clerk, U.S. District Court(n-4) Certified Original Record (1) volume and (1) volume of transcript under separate cover (n-4)
(G)01-11-84 (G)01-11-84 (G)01-11-84 (G)01-11-84 (G)01-11-84	Notice from Clerk, U.S. District Court that fee was paid on January 11, 1984 4-Appellants' emergency motion for expedited appeal and decision (p-11) 4-Appellants' brief (p-11) 4-Appellants' appendix (p-11)
(G)01-11-84 (V)01-11-84	Docketing statement mailed to counsel for appellants Clerk's order that a response to the papers filed herein on January 11, 1984 be served and filed no later than 12:00 p.m. Friday, January 13, 1984
(V)01-13-84	Per curiam order that appellants/petitioners' emergency motions for expedited appeal and stay are denied. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958); and that the petition for writ of mandamus is denied; Tamm (who did not participate), Wilkey and Scalia, CJs
(J)01-13-84 (J)01-13-84	4-Appellees' motion to dismiss (m-13) 4-Appellees' opposition to motion for expedited appeal or for issuance of a writ of mandamus (m-13)
(J)01-23-84 (V)01-30-84	4-Appellants' motion to dismiss appeal (m-18) Per curiam order that appellants' motion to dismiss appeal is granted and the above appeal is hereby dismissed. The Clerk is directed to send a certified copy of this order to the District Court; Tamm (who did not participate), Wilkey and Scalia, CJs
(V)01-30-84 (J)02-03-84	Certified copy of above order sent to District Court Receipt dated 01-31-84 from District Court for certified original record 1 vol.; 1 vol. of transcript under 1 separate cover

CC 1-31-84

84-5013

GENERAL DOCKET

84-5013

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF HABEAS CORPUS

84-5155

See 84-5014

In re:

Michael D. Barnes, individually
and in his capacity as a member of
the United States House of Repre-
sentatives, et al.,

Petitioners

COUNSEL: APPELLANT/PETITIONER

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TYPE

DOJ:
William Kanter 633-1597
Marc Johnston 633-3305
U.S. Dept. of Justice
Civil Division - Room 3617 20530

US

Popular Name:

Number of Case/Order Below: CV. 84-00020

Case Type: OP.MAND.

JS-34: Yes ☒ No ☐

Judge Below:

Date of Judg./Order:

USDC Offense/Nature of Suit Code:

Date Docketed: 01-11-84

Date Filed in Dist. Court:

Notice of Appeal Filed:

U.S. Mag: ☐ Direct☐ Indirect

FINANCIAL

USA

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84-5013

REMARKS

84-5013

DATE	FILINGS — PROCEEDINGS
(G)01-11-84	4-Petitioners' petition for writ of mandamus (p-11)
(G)01-11-84	4-Petitioners' emergency motion for expedited appeal and decision (p-11)
(G)01-11-84	4-Petitioners' exhibits to petition for writ of mandamus (p-11)
(G)01-11-84	Docketing statement given to counsel for petitioners'
(V)01-11-84	Clerk's order that a response to the papers filed herein on January 11, 1984 be served and filed no later than 12:00 p.m., Friday, January 13, 1984
(V)01-13-84	Per curiam order that appellants/petitioners' emergency motions for expedited appeal and stay are denied. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958); and that the petition for writ of mandamus is denied; Tamm (who did not participate), Wilkey and Scalia, CJs
(J)01-13-84	4-Respondents' motion to dismiss (m-13)
(J)01-13-84	4-Respondents' opposition to motion for expedited appeal or for issuance of writ of mandamus (m-13)

YR.	NUMBER	MO.	DAY	YR.	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000
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TITLE: HARNES, ET AL. V CARMEN, ET AL.

CAUSE: 1 USC 106(A); REVIEW AGENCY ACTION

JACKSON, J. D

11 PLA
BARNEY FRANK
IND/MEH. U.S. HOUSE OF REPS.

12 PLA
ROBERT GARCIA
IND/MEH. U.S. HOUSE OF REPS.

13 PLA
SAMUEL GEJENSON
IND/MEH. U.S. HOUSE OF REPS.

14 PLA
PETER KOSTMEYER
IND/MEH. U.S. HOUSE OF REPS.

15 PLA
MICKEY LELAND
IND/MEH. U.S. HOUSE OF REPS.

16 PLA
MEL LEVINE
IND/MEH. U.S. HOUSE OF REPS.

17 PLA
ROBERT MATSUI
IND/MEH. U.S. HOUSE OF REPS.

18 PLA
MATT MCHUGH
IND/MEH. U.S. HOUSE OF REPS.

19 PLA
EDWARD J. MARKEY
IND/MEH. U.S. HOUSE OF REPS.

20 PLA
BARBARA A. MIKULSKI
IND/MEH. U.S. HOUSE OF REPS.

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID		STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD DATE MAILED
				JS-3
				JS-4
UNITED STATES DISTRICT COURT DOCKET				

YR.	NUMBER	MO.	DAY	YR.	YR.	NUMBER
0090	1	84-0020	01/04/84	2	890	1

TITLE:

BARNES, ET AL V CARMEN, ET AL

CAUSE: 1 USC 106(A); REVIEW AGENCY ACTION

31 PLA
BRUCE VENTO

IND/HEM. U.S. HOUSE OF REPS.

32 FLA
TED WLSS

IND/HEM. U.S. HOUSE OF REPS.

33 PLA
HOWARD WILFPE

IND/HEM. U.S. HOUSE OF REPS.

INTERVENOR-PLTTS:

THE UNITED STATES SENATE

HOUSE OF REPRESENTATIVES

• 34 DFT

GERALD P. CARMEN
IND/ADMINISTRATOR C.S.A.

35 DFT

RONALD GEISLER
IND/EXEC. CLERK OF WHITE HOUSE

JOHN PRIVITERA
SUITE 603

1302 18TH STREET, N.W.
WASHINGTON
(202) 785-8900

DC 20006

Judith F. Ledbetter
U. S. Department of Justice
Room 3537

10th & Constitution Ave., N.W.
Washington, D. C. 20530
(202) 633-3256

Intervenor-pltf: (Senate)

Michael Davidson
Morgan J. Frankel
642 Hart Senate Office Bldg.
Washington, D. C. 20510
(202) 224-4435

Intervenor-pltf: (House)

Michael L. Murray
U.S. House of Representatives
The Capitol, H-105
Washington, D. C. 20515
(202) 225-9700

CHECK HERE <input type="checkbox"/>	FILING FEES PAID		STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD
IF CASE WAS FILED IN FORMA PAUPERIS				JS-3
				JS-6

UNITED STATES DISTRICT COURT DOCKET

[4]

DC 111 (Rev. 7/85)

DATE	NR.	PROCEEDINGS
<u>1984</u>		
Jan 4	1	COMPLAINT; appearance; Exhibits A-E. (ml)
Jan 4	2	MOTION by pliffs. for Preliminary Injunction; affirmation in support; statement of Points & Authorities.
Jan 4	3	MOTION by pliffs. to shorten time for filing of opposition to motion for Preliminary Injunction and to shorten time for oral hearing on Preliminary Injunction; declaration of Michael Ratner. (ml)
Jan 4		SUMMONS (6) issued. (ml)
Jan 4	4	AFFIDAVIT OF SERVICE upon Gerald P. Carmen, Ronald Geisler, the U. S. Attorney and the U. S. Attorney General on 1-4-84. (ml)
Jan 5	5	OPPOSITION by defts. to pliffs' motion to shorten time.
Jan 9	6	REPLY by pliffs. to defts' opposition to pliffs' motion to shorten time. (ml)
Jan 11	7	TRANSCRIPT OF PROCEEDINGS taken on Jan. 9, 1984; Rep: P. Merana. pp. 1-22. b1
Jan 11	8	NOTICE OF APPEAL by Pliffs. from order entered Jan. 9, 1984; copy of notice mailed to Judith Ledbetter, Dept. of Justice; \$65.00 USCA and \$5.00 USDC fee paid and credited to U.S. Treasury.
Jan 11		Copy of Notice of Appeal and docket entries transmitted to USCA; USCA# 84-5014.
Jan 11		RECORD ON APPEAL transmitted to USCA; receipt acknowledged 1-11-84.
Jan 27	9	MOTION by the United States Senate to Intervene; attachment; no fee-government; Exhibits (Complaint; Motion for Summary Judgment); Appearance: Michael Davidson, 642 Senate Office Bldg., Washington, D. C. 20510; (202) 224-4435. (ml)
Jan 30	10	MOTION by defts. for summary judgment; statement of material facts; declaration of Ronald R. Geisler; P&A's; Appendix I. (ml)
Jan 31	11	CERTIFIED Copy of Order from USCA dated 1-30-84; Ordered that appellants' motion to dismiss appeal is granted and the above appeal is hereby dismissed. (ml)
Feb 1		TRANSMITTAL LETTER from USCA returning 1 volume original record and 1 volume of transcript under 1 separate cover. (ml)
Feb 2	12	ORDER filed 2-1-84 granting motion of U. S. Senate to Intervene as party pltf. (N) JACKSON, J. (ml)
Feb 2	13	COMPLAINT by intervenor for declaratory relief. (ml)
Feb 2	14	MOTION by intervenor for summary judgment; statement of material facts; memorandum in support. (ml)
Feb 2	15	MOTION by pliffs. and intervenor pltf. for extension of time to file their final submissions. (ml)
Feb 8	16	ORDER filed 2-6-84 granting joint motion of pltf. and intervenor for extension of time, and extending time to 2-8-84 to file their final submissions. (N) JACKSON, J. (ml)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT		DOCKET NO. <u>84-0020</u>
MICHAEL D. BARNES, et al.		GERALD P. CARMEN, et al.		PAGE <u>1</u> OF <u> </u> PAGES
DATE	NR.	PROCEEDINGS		
1984				
'eb 08	17	MOTION by pltf. for summary judgment; statement of material facts; Michael D. Barnes. (fs)		
'eb 08	18	MEMORANDUM by pltf. in opposition to motion of deft. for summary judgment, in support of motion of pltf's. for summary judgment; declaration of Michael Ratner; Table of contents and Table of authorities. (fs)		
'eb 08	19	POINTS AND AUTHORITIES by deft. in opposition to motion of intervenor for summary judgment. (fs)		
'eb 08	20	OPPOSITION of intervenor to motion of defts. for summary judgment; table of contents; table of authorities; statement of genuine issue. (fs)		
Feb 17	21	OPPOSITION by defts. to pltf's' motion for summary judgment. (ml)		
Feb 17	22	MOTION by the Speaker and the bipartisan elected leadership of the United States House of Representatives to intervene; no fee- government; memorandum of P&A's; table of cases and authorities; Exhibit (Complaint; Motion for summary judgment) (Appearance: Michael L. Murray, U.S. House of Representatives, The Capitol, H-105, Washington, D. C. 20515, (202) 225-9700) (ml)		
Feb 22		MOTION of House of Representatives to intervene as party pltf. heard and granted; trial on the merits heard and taken under advisement. (Rep. P. Merana) JACKSON, J. (ml)		
Feb 22	23	COMPLAINT by intervenor-pltf's. the House of Representatives. (ml)		
Feb 22	24	MOTION by intervenor-pltf's. the Speaker and elected bipartisan leadership of the U.S. House of Representatives for summary judgment; memorandum of P&A's; table of cases and authorities; statement of material facts. (ml)		
Mar 12	25	MEMORANDUM & ORDER filed 3-9-84 denying pltf's and pltf-intervenor's motion for summary judgment and preliminary and permanent relief and granting deft's motion for summary judgment and dismissing complaint with prejudice. (N) JACKSON, J. (ml)		
Mar 14	26	NOTICE OF APPEAL by pltf's. and intervenor-pltf's. from order entered 3-12-84; no fee - government; copy of notice sent to: Judith F. Ledbetter. (ml)		
Mar 15		COPY of Notice of Appeal and docket entries transmitted to USCA# <u> </u>		

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action Number

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY
AS A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 401 CANNON HOUSE OFFICE BUILDING,
WASHINGTON, D.C. 20515, (202) 225-5341;

GARY ACKERMAN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1725 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-2601;

HOWARD BERMAN, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1022 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-4695;

JOHN CONYERS, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 2313 RAYBURN HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515 (202) 225-5126;

RONALD V. DELLUMS, INDIVIDUALLY AND IN HIS CAPACITY
AS A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 2136 RAYBURN HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-2661;

MERVYN DYMALLY, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1717 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-5425;

DENNIS ECKART, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1221 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 255-6331;

ROBERT W. EDGAR, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 2352 RAYBURN HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-2011;

VIC FAZIO, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1421 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-5716;

ED FEIGHAN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1223 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-5731;

BARNEY FRANK, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1609 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515 (202) 225-5931;

ROBERT GARCIA, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 223 CANNON HOUSE OFFICE BUILDING,
WASHINGTON, D.C. 20515, (202) 225-4361;

SAMUEL GEJDENSON, INDIVIDUALLY AND IN HIS CAPACITY
AS A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1008 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-2076;

PETER KOSTMEYER, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 123 CANNON HOUSE OFFICE BUILDING,
WASHINGTON, D.C. 20515, (202) 225-4276;

MICKEY LELAND, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 419 CANNON HOUSE OFFICE BUILDING,
WASHINGTON, D.C. 20515, (202) 225-3816;

MEL LEVINE, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 502 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-6451;

ROBERT MATSUI, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 231 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-7163;

MATT McHUGH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2335 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-6335;

EDWARD J MARKEY, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 205 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-2836;

BARBARA A. MIKULSKI, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 407 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-4016;

GEORGE MILLER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2422 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-2095;

BRUCE MORRISON, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 437 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-3661;

MARY ROSE OAKAR, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2436 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-5871;

JAMES L. OBERSTAR, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2351 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-6211;

RICHARD L. OTTINGER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2241 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-6506;

PATRICIA SCHROEDER, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2410 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-4431;

PAUL SIMON, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 343 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-5201;

FERDINAND ST. GERMAIN, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2108 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-4911;

GERRY STUDDS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 1501 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-3111;

ROBERT TORRICELLI, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 317 CANNON HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-5661;

BRUCE VENTO, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, 2433 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515, (202) 225-6631;

TED WEISS, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 2442 RAYBURN HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-5635;

HOWARD WOLPE, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, 1527 LONGWORTH HOUSE OFFICE
BUILDING, WASHINGTON, D.C. 20515, (202) 225-5011;

PLAINTIFFS,

-AGAINST-

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY
AS ADMINISTRATOR, GENERAL SERVICES ADMINISTRATOR,
18TH AND F STREET, N.W., WASHINGTON, D.C. 20006;
AND RONALD GEISLER, INDIVIDUALLY AND IN HIS CAPACITY
AS THE EXECUTIVE CLERK OF THE WHITE HOUSE, 1600
PENNSYLVANIA AVENUE N.W., WASHINGTON D.C. 20006;
DEFENDANTS.

Complaint for Declaratory and Mandamus/or Injunctive Relief

I

INTRODUCTORY STATEMENT

1. This action seeks a declaration that H.R. 4042, which mandates certain certification requirements as a pre-condition for military aid to El Salvador, has become law. H.R. 4042 was passed unanimously by the House on September 30, 1983, and by the Senate on November 17, 1983. Pursuant to Article I, Section 7, clause 2 of the United States Constitution, Congress sent H.R. 4042 to the President on November 18, 1983. The President held the bill longer than ten days and did not return it to Congress. He issued a statement in which he claimed to exercise a "pocket veto."

2. A "pocket veto" is a narrow exception to the general rule that a bill becomes law if the President fails to return it to Congress within ten days. It can be constitutionally exercised only when the adjournment of Congress prevents the bill's return. Both Houses of Congress have specifically appointed agents for receipt of messages from the President and the President was not prevented from returning the bill with his objections to Congress.

3. H.R. 4042 has become law and the defendants are under a ministerial, non-discretionary duty to deliver and publish it as such. Plaintiffs seek an injunction and/or a writ of mandamus requiring the defendants to do so.

II

JURISDICTION

5. The jurisdiction of this Court arises under 28 U.S.C. § 1331 and § 1361; the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*; and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* The claims in this case present questions under Article I, Section 7, Clause 2 of the United States Constitution, and federal statutes: 1 U.S.C. § 106(a), § 112 and § 113.

III

PLAINTIFFS

6. Plaintiff Michael D. Barnes is a citizen of the United States and a member of the 98th Congress representing the Eighth District of Maryland. He is Chairman of the House Sub-committee on Western Hemispheric Affairs and was responsible for the introduction of H.R. 4042. On September 30, 1983, he voted in favor of the bill.

7. Plaintiffs Gary Ackerman, M.C., 7th Dist. NY; Howard Berman, M.C., 26th Dist. CA; John Conyers, M.C., 1st Dist. MI; Ronald V. Dellums, M.C., 8th Dist. CA; Mervyn Dymally, M.C., 31st Dist. CA; Dennis

Eckart, M.C., 11th Dist. OH; Robert Edgar, M.C., 7th Dist. PA; Vic Fazio, M.C., 4th Dist. CA; Ed Feighan, M.C. 19th Dist. OH; Barney Frank, M.C., 4th Dist. MA; Robert Garcia, M.C., 18th Dist. NY; Samuel Gejdenson, M.C., 2nd Dist. CT; Peter Kostmeyer, M.C., 8th Dist. PA; Mickey Leland, M.C., 18th Dist. TX; Mel Levine, M.C., 27th Dist. CA; Robert Matsui, M.C. 3rd Dist. CA; Matt McHugh, M.C., 28th Dist. NY; Edward Markey, M.C., 7th Dist. MA; Barbara A. Mikulski, M.C. 3rd Dist. MD; Bruce Morrison, M.C. 3rd Dist. CT; Mary Rose Oakar, M.C., 20th Dist. OH; James Oberstar, M.C., 8th Dist. MN; Richard Ottinger, M.C., 20th Dist. NY; Patricia Schroeder, M.C., 1st Dist. CO; Ferdinand St. Germain, M.C., 1st Dist. RI; Gerry Studds, M.C., 10th Dist. MA; Robert Torricelli, M.C., 9th Dist. NJ; Bruce Vento, M.C. 4th Dist. MN; Ted Weiss, M.C., 17th Dist. NY; Howard Wolpe, M.C., 3rd Dist. MI; all, on information and belief, voted in favor of H.R. 4042 September 30, 1983.

8. Plaintiffs George Miller, M.C., 7th Dist. CA, and Paul Simon, M.C., 22nd Dist. IL, did not vote.

9. Plaintiff members of Congress who voted in favor of H.R. 4042 suffered injury in that their votes were nullified by defendants' refusal to deliver and publish H.R. 4042 as a law of the United States and in that they were denied an opportunity to override a presidential veto. As a result of defendants' actions the congressional branch of government has suffered a diminution of its power and the effectiveness of each of the plaintiffs as members of Congress has been diminished.

10. Plaintiff members of Congress, pursuant to their constitutional power to make appropriations, have, by passage of H.R. 4042, placed a condition precedent on further military aid to El Salvador. Unless H.R. 4042 is delivered and published as law by defendants such military aid to El Salvador will continue illegally, without the required presidential certification. Such an event will cause a

diminution in Congress' power over appropriations and a consequent diminution of the effectiveness of each plaintiff, who by voting for H.R. 4042, determined that military aid to El Salvador should cease on January 16, 1984, unless the appropriate presidential certification occurs.

11. Plaintiff members of Congress who did not vote on H.R. 4042 are injured in that the use of a pocket veto when the President is not prevented from exercising a return veto diminishes the power of Congress and the effectiveness of each member thereof.

IV

DEFENDANTS

12. Defendant Ronald Geisler is the Executive Clerk of the White House. It is his duty to receive enrolled bills and to deliver those that have become law to the Administrator of the General Services Administration for publication. He has failed to perform that duty with respect to H.R. 4042.

13. Defendant Gerald P. Carmen is the Administrator of the General Services Administration. He has a ministerial statutory duty to receive bills that have become law and publish them in slip form and in the United States Statutes at Large. He has failed to perform that task with respect to H.R. 4042.

V

FACTS

14. On September 30, 1983, by a unanimous voice vote, including the vote of plaintiffs named in paragraph 7 herein, the House of Representatives passed H.R. 4042, which provides that the current certification requirements with regard to El Salvador should continue "until such time as the Congress enacts new legislation providing conditions for United States military assistance to El Salvador

or until September 30, 1984, whichever occurs first." 129 Cong. Rec. H777 (daily ed. Sept. 30, 1983), *see* Exhibit A, attached hereto.

15. On November 17, 1983, the Senate passed H.R. 4042 by a unanimous voice vote. 129 Cong. Rec. S16468 (daily ed. Nov. 17, 1983), *see* Exhibit B, attached hereto.

16. The certification requirements which continue to apply under H.R. 4042 are those contained in Section 728 of the International Security and Development Cooperation Act of 1981, 22 U.S.C. § 2370, Public Law 97-113, § 728, 95 Stat. 1519, 1555-57 (1981), which provides that military assistance to El Salvador shall cease unless the President every 180 days certifies to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate that the Government of El Salvador:

- (1) is making a concerted and significant effort to comply with internationally recognized human rights;
- (2) is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvador citizens by these forces;
- (3) is making continued progress in implementing essential economic and political reforms, including the land reform program;
- (4) is committed to the holding of free elections at an early date and to that end has demonstrated its good faith efforts to begin discussions with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict, with such solution to involve a commitment to—
 - (A) a renouncement of further military aid or paramilitary activity; and
 - (B) the electoral process with internationally recognized observers.

Each such certification shall discuss fully and completely the justification for making each of the determinations required by paragraphs (1) through (4).

(e) On making the first certification under subsection (b) of this section, the President shall also certify to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that he has determined that the Government of El Salvador has made good faith efforts both to investigate the murders of the six United States citizens in El Salvador in December 1980 and January 1981 and to bring to justice those responsible for those murders.

17. Under H.R. 4042, the President is required to make the necessary certification on or about January 16, 1984.

18. On November 18, 1983, H.R. 4042 was presented to the President for his consideration pursuant to Article I, Section 7, Clause 2, of the United States Constitution. 129 Cong. Rec. H10663 (daily ed. Dec. 14, 1983), *see* Exhibit C, attached hereto.

19. On November 18, 1983, both the House of Representatives and the Senate adjourned the First Session of the 98th Congress, in accordance with the principles of House Concurrent Resolution 221 and House Joint Resolution 421. 129 Cong. Rec. H10469, S16779, S16858, S17192-3 (daily ed. Nov. 18, 1983); 129 Cong. Rec. H10105 (daily ed. Nov. 16, 1983).

20. Both the House of Representatives and Senate adjourned until January 23, 1984, at 12:00 noon, but provided in a special concurrent resolution for their earlier reassembly on short notice whenever in the opinion of the Speaker of the House of Representatives and the Majority Leader of the Senate, "the public interest shall warrant it." (H. Cong. Res. 221, 98th Cong., 1st Sess.; H-J. Res. 421,

98th Cong., 1st Sess.; 129 Cong. Rec. S16858 (daily ed. Nov. 18, 1983); 129 Cong. Rec. H10105 (daily ed. Nov. 16, 1983).

21. The Rules of the House of Representatives provide standing authority for the Clerk to receive messages from the President at any time that the House is not in session. *Rules of the House of Representatives*, 98th Cong., 1st Sess., Rule III.5 (1983) (hereinafter *Rules of the House*), see Exhibit D, attached hereto; and for the Speaker to sign enrolled bills when the House is not in session, see *Rules of the House*, I.

22. The Senate, prior to adjourning, unanimously resolved "that during the *sine die* adjournment of the Senate, messages from the President of the United States and the House of Representatives may be received by the Secretary of the Senate and appropriately referred," and that the President of the Senate and the President pro tempore, are "authorized to sign duly enrolled bills and joint resolutions," and make appointments to commissions or committees, notwithstanding the *sine die* adjournment. S. Res. 298, 98th Cong., 1st Sess.; 129 Cong. Rec. S17192 (daily ed. Nov. 18, 1983); S. Res. 301, 98th Cong., 1st Sess.; 129 Cong. Rec. S17192 (daily ed. Nov. 18, 1983).

23. On November 30, 1983, the President issued a statement that he "withheld approval of H.R. 4042, an enrolled bill that would require two Presidential certifications in 1984. . ." Statement by the Principal Deputy Press Secretary, Nov. 30, 1983; 19 Weekly Comp. of Pres. Doc. 1627 (Nov. 30, 1983), see Exhibit E, annexed hereto; President's action noted in 129 Cong. Rec. D1604 (daily ed. Dec. 14, 1983).

24. More than ten days (excluding Sundays) have passed since Congress sent H.R. 4042 to the President; he has neither signed the bill nor returned it to Congress with his objections.

25. President Reagan did not veto H.R. 4042 pursuant to the procedures set forth in Article I, Section 7, clause 2 of the United States Constitution as both houses had made arrangements for the authorized receipt of messages during their adjournments, and the President was not prevented from exercising a return veto.

26. President Reagan's attempted use of the pocket veto is contrary to the practice of presidents Carter and Ford. President Carter never employed a "pocket veto" during inter-session or intrasession adjournments but always used the return veto. President Ford consented to entry of summary judgment in *Kennedy v. Jones*, 412 F.Supp. 353 (D.D.C. 1976), and "determined that he [would] use the return veto rather than the pocket veto during intrasession and intersession recesses and adjournments," where appropriate arrangements for receipt of presidential messages were made. (Cong. Rec., Apr. 26, 1976, S11202).

27. As President Reagan has not returned H.R. 4042 to Congress within ten days (Sundays excepted) after it had been presented to him, H.R. 4042 has become law.

28. Defendant Geisler, Executive Clerk of the White House, has to date failed in his duty to deliver H.R. 4042, a law of the United States, to the defendant Administrator of the General Services Administration for publication.

29. Defendant Carmen, Administrator of the General Services Administration, has to date failed to publish H.R. 4042 as a law of the United States, as required by Article I, Section 7, clause 2, of the United States Constitution, and 1 U.S.C. §§ 106(a), 112 and 113.

30. Defendants by their failure to deliver and publish H.R. 4042 as a law of the United States have nullified plaintiffs' votes in favor of the bill.

VI

CAUSE OF ACTION

31. As a CAUSE OF ACTION, plaintiffs repeat and reallege each and every allegation above as if set forth herein.

32. The aforesaid acts and omissions of defendants violate Article I, Section 7, Clause 2, of the United States Constitution and violate 1 U.S.C. §§ 106(a), 112 and 113.

VII

IRREPARABLE INJURY

33. Plaintiffs have no adequate remedy of complete remedy at law to redress the violations of constitutional and statutory law alleged herein. Plaintiffs face immediate and irreparable injury from the acts and omissions of defendants.

RELIEF

A. DECLARATORY RELIEF

1. A declaration that H.R. 4042 is a valid law of the United States.

2. A declaration that defendants are under a ministerial, nondiscretionary duty to deliver and to publish H.R. 4042 as a law of the United States in accordance with the provisions of 1 U.S.C. §§ 106a, 112 and 113.

B. INJUNCTIVE OR MANDAMUS RELIEF

1. A Writ of Mandamus and/or a preliminary or permanent injunction directing defendant Geisler to deliver H.R. 4042 to the Administrator of the General Services Administration for publication.

2. A Writ of Mandamus and/or a preliminary or permanent injunction directing defendant Carmen to publish H.R. 4042 in slip form and in the United States Statutes at Large.

C. OTHER RELIEF

1. An award of such other and further relief this Court deems just and proper.

Respectfully submitted,

MICHAEL RATNER
MARGARET RATNER
ELLEN YAROSHEFSKY
MORTON STAVIS
PETER WEISS
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Attorneys for Plaintiffs

Dated: Washington, D.C.
January 4, 1983

EXHIBITS

Exhibit "A": 129 Cong. Rec. H7777 (daily ed. Sept 30, 1983).

Exhibit "B": 129 Cong. Rec. S16468 (daily ed. Nov. 17, 1983).

Exhibit "C": 129 Cong. Rec. H10663 (daily ed. Dec. 14, 1983).

Exhibit "D": Rule III.5, Rules of the House of Representatives. 98th Congress, 1st Sess. (1983).

Exhibit "E": Statement by the Principal Deputy Press Secretary, (concerning H.R. 4042) Nov. 30, 1983.

The future depends to a large degree on the kinds of decisions we make on farm policy, but it impacts from the futures industry to Wall Street to big to small to international banking. And the fact is that the policy can well decide how we survive as a nation.

I know it is very difficult for some of our colleagues to understand, but if the food is not there today, forget everything else that we do here in this House-war powers, Export Administration, budget, everything else that we do. If you do not have the food that day, forget it, that is the end of the ball game.

I would like to follow up with what my colleague has said that the responsibility is going to be ours, the consumer, labor, business, and all Americans to see that the base for our sustenance, which is the agricultural area, the farm sector, is sustained and maintained in a viable, productive posture so that it will help all of us for the future as a nation and as a people.

CONTINUING IN EFFECT CURRENT CERTIFICATION REQUIREMENTS WITH RESPECT TO EL SALVADOR

Mr. BARNES. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs be discharged from further consideration of the bill (H.R. 4042) to continue in effect the current certification requirements with respect to El Salvador until the Congress enacts new legislation providing conditions for U.S. military assistance to El Salvador or until the end of fiscal year 1984, whichever occurs first, and ask for its immediate consideration.

The Clerk read the title of the bill. The SPEAKER pro tempore (Mr. Alexander). Is there objection to the request of the gentleman from Maryland?

Mr. LAGOMARSINO. Reserving the right to object, Mr. Speaker, and I shall not object, I do so for the purpose of asking the chairman of the Subcommittee on Western Hemisphere Affairs to explain what the bill does.

Mr. BARNES. If the gentleman will yield, I thank the distinguished ranking minority member of the Subcommittee on Western Hemisphere Affairs for allowing me this opportunity to explain the bill.

Very briefly, the bill simply extends the current law with respect to conditions on military assistance to Salvador until we either pass the new bill which has been reported out of the Foreign Affairs Committee on which a compromise was worked out on the modification of the current conditions, or until the end of the new fiscal year, whichever is earlier. Obviously, we hope that the new conditions will be enacted into law in a brief time and that the former conditions would continue to apply until the new law is enacted.

I am informed that, although the administration does not believe it is necessary to extend the current conditions, they do not object to this legislation. We had a unanimous vote yesterday, Republicans and Democrats, in the House Foreign Affairs Committee. So I would think that it is not controversial.

Basically, it would assure that we are still on record as wanting progress in certain areas. Particularly we are concerned, obviously about the protection of individuals who are responsible for the murders of American citizens; we are concerned about continuing violations of human rights; we are concerned about the land reform program. There was a march in the capital city, San Salvador, just a couple of days ago, 15,000 campesinos, urging continuation of the program, and this simply will keep the Congress on record in support of those continued efforts of people in El Salvador to bring about these changes in conditions.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, we did receive word from the White House this morning that, as the gentleman says, while the administration did not ask for this extension, while they do not think it is necessary because, as they told us yesterday, they intend to comply with its conditions in any event, they do not object to it, nor do I.

I would like to say that while I think it would have been better to have passed the language, concerning conditions on military aid to El Salvador, that is in the pending foreign assistance legislation, I understand the reasons why that is not practical. The requirement of conditions and certification expires at midnight tonight. We can hardly do that today. And that would have to be the case. The House here would have had to been educated about the new provisions, the Senate would have had to been educated. They have a slightly different view of what ought to be done. There just is not time. I hope we can adapt the new proposals in the days and weeks to come.

I think it would be an unfortunately bad signal to send were we not to extend certification, not only to those who have been abusing human rights in El Salvador, but I think even more importantly, to those who want to do the right thing, who need all of the help they can get in bringing about democratic changes and changes in human rights in El Salvador.

Mr. ZABLOCKI. Mr. Speaker, I rise in support of H.R. 4042, a bill to continue in effect the current certification requirements with respect to El Salvador until the Congress enacts new legislation.

This bill is straightforward and non-controversial. It simply extends the existing certification requirements for military aid to El Salvador until new

legislation is enacted or until September 30, 1984, whichever occurs first.

We all recognize the deficiencies in the current certification process. However, we have not yet enacted new legislation on El Salvador for fiscal year 1984. Therefore, unless the current law is extended, there will be no conditions of any kind on military aid to El Salvador after September 30. So, while this may be an imperfect mechanism, I think it is the best one available until we are able to bring the new foreign assistance authorization bill to the floor.

I urge my colleagues to support the bill.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4042

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That the requirements of section 726 of the International Security and Development Cooperation Act of 1981 (including the last sentence of subsection (e) of that section) shall continue to apply after the end of the fiscal year 1983 until such time as the Congress enacts new legislation providing conditions for United States military assistance to El Salvador or until September 30, 1984, whichever occurs first.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BARNES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

PROVIDING TEMPORARY EXTENSION OF CERTAIN INSURANCE PROGRAMS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 366) to provide for the temporary extension of certain insurance programs relating to housing and community development, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment, as follows:

Page 3, after line 3, insert:

(2) The Administration shall require as a condition to the award of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant shall be provided by the applicant from sources other than the Federal Government, to be comprised of not less than 50 per centum of cash and not more than 50 per centum of indirect costs and in-kind contributions. Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program. Provided further, That no recipient of funds under this section shall receive a grant

House of Representatives

WEDNESDAY, DECEMBER 14, 1983

SENATE ENROLLED BILLS SIGNED AFTER SINE DIE ADJOURNMENT

The SPEAKER announced his signature to enrolled bills of the following title on the following date:

On November 22, 1983:
S. 571. An act to provide for the conveyance of certain Federal lands adjacent to Orchard and Lake Shore Drives, Lake Lowell, Boise project, Idaho.
S. 1048. An act to clarify the applicability of a provision of law regarding risk retention.
S. 1341. An act to revise and extend the Education of the Handicapped Act, and for other purposes.
S. 1533. An act to direct the Secretary of Agriculture to release on behalf of the United States a revolutionary interest in certain land in the State of Delaware; and
S. 1837. An act to designate the Federal Building in Seattle, Wash., as the "Henry M. Jackson Federal Building."

On November 29, 1983:

S. 305. An act to designate the Federal building to be constructed in Savannah, Ga., as the "Juliette Gordon Low Federal Building."
S. 329. An act to authorize \$15,500,000 for capital improvement on Guam, and for other purposes.
S. 574. An act to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to improve the quality and efficiency of the military justice system, to revise the laws concerning review of courts-martial, and for other purposes.
S. 1099. An act to consolidate and authorize certain marine fishery programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce; and
S. 2129. An act to provide revised reimbursement criteria for small rural health clinics utilizing National Health Service Corps personnel.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. HAWKINS, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker on the following dates:

On November 22, 1983:
H.R. 734. An act for the relief of Carlos McBranco Gausson.
H.R. 2196. An act to extend the authorization of appropriations of the National Historical Publications and Records Commission for 5 years.
H.R. 2293. An act to revise the authority and responsibility of the Office of Federal

Procurement Policy, to authorize appropriations for the Office of Federal Procurement Policy for an additional 4 fiscal years, and for other purposes.
H.R. 2355. An act to extend the Wetlands Loan Act.

H.R. 2479. An act to amend the act of March 3, 1859, incorporating the Masonic Relief Association of the District of Columbia, now known as Aracis Mutual Life Insurance Co.

H.R. 2725. An act to amend the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and to extend the authorization for appropriations for such act.

H.R. 3506. An act to amend the Arms Control and Disarmament Act in order to extend the authorization for appropriations.

H.R. 2815. An act to authorize appropriations for fiscal years 1984 and 1985 for the Department of State, the U.S. Information Agency, the Board for International Broadcasting, the Inter-American Foundation, and the Asia Foundation, to establish the National Endowment for Democracy, and for other purposes.

H.R. 3285. An act to stabilize the supply and demand for dairy products, to make modifications in the tobacco production adjustment program, to provide emergency livestock feed assistance, and for other purposes.

H.R. 3763. An act to declare that the United States holds certain lands in trust for the Las Vegas Paiute Tribe.

H.R. 4232. An act to suspend the noncash benefit requirement for the Puerto Rico nutrition assistance program, to provide States with greater flexibility in the administration of the food stamp program, and for other purposes.

H.R. 4294. An act to name the Veterans' Administration Medical Center in Altoona, Pa., the "James E. Van Zandt Veterans' Administration Medical Center," and to name the Veterans' Administration Medical Center in Dublin, Ga., the "Carl Vinson Veterans' Administration Medical Center."

H.R. 4476. An act to extend the authorities under the Export Administration Act of 1979, and for other purposes.

H.J. Res. 311. Joint resolution to proclaim March 20, 1984, as "National Agriculture Day."

H.J. Res. 324. Joint resolution to designate the week beginning January 15, 1984, as "National Fetal Alcohol Syndrome Awareness Week."

H.J. Res. 381. Joint resolution to provide for appointment of Samuel Curtis Johnson as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 405. Joint resolution to extend the term of the Presidential Commission for the German-American Bicentennial, and for other purposes; and
H.J. Res. 421. Joint resolution providing for the convening of the 2d session of the 98th Congress, and for other purposes.

On November 29, 1983:
H.R. 1035. An act to make certain technical amendments to improve implementation

of the Education Consolidation and Improvement Act of 1981, and for other purposes.

H.R. 2735. An act to authorize appropriations for the Federal Communications Commission for fiscal years 1984 and 1985, and for other purposes.

H.R. 2958. An act to authorize appropriations for fiscal year 1984 for intelligence and intelligence-related activities of the U.S. Government, for the intelligence community staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 3559. An act making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes; and

H.R. 4185. An act making appropriations for the Department of Defense of the fiscal year ending September 30, 1984, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. HAWKINS, from the Committee on House Administration, reported that that committee did on November 18, 1983, present to the President, for his approval, bills and joint resolutions of the House of the following titles:

H.R. 24. An act to make certain land owned by the United States in the State of New York part of the Treen Mountain National Forest.

H.R. 2320. An act to amend Civil Rights Act of 1957 to extend the life of the Civil Rights Commission, and for other purposes.

H.R. 2390. An act to amend the Agricultural Adjustment Act to authorize marketing research and promotion projects, including paid advertising, for farmers, and to amend the Potato Research and Promotion Act.

H.R. 2592. An act to transfer from the Director of the Office of Management and Budget to the Administrator of General Services the responsibility for publication of the catalog of Federal domestic assistance programs, and for other purposes.

H.R. 2780. An act to extend and amend the provisions of title 31, United States Code, relating to the general revenue sharing program.

H.R. 4013. An act to extend the small business development center program administered by the Small Business Administration until January 1, 1985.

H.R. 4042. An act to continue in effect the current certification requirements with respect to Salvador until the Congress enacts new legislation providing conditions for U.S. military assistance to El Salvador or until the end of fiscal year 1984, which ever occurs first.

H.J. Res. 93. Joint resolution to provide for the awarding of a special gold medal to Danny Thomas in recognition of his humanitarian efforts and outstanding work as an American.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1:407 is 2:07 p.m.
• This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

H 10663

[38]

EXHIBIT "C"

RULE II

ELECTION OF OFFICERS

There shall be committees and in such other places in the Capitol and the House Office Buildings as he deems appropriate. Such system may include other telecommunications functions as he deems appropriate.

(b)(1) He shall devise and implement a system subject to his direction and control for complete and unedited audio and visual broadcasting and recording of the proceedings of the House of Representatives. He shall provide for the distribution of such broadcasts and recordings thereof to news media and the storage of audio and video recordings of the proceedings.

(2) All television and radio broadcasting stations, networks, services, and systems (including cable systems) which are accredited to the House radio and television correspondents' galleries, and all radio and television correspondents who are accredited to the radio and television correspondents' galleries shall be provided access to the live coverage of the House of Representatives.

(3) No coverage made available under this clause nor any recording thereof shall be used for any political purpose.

(4) Coverage made available under this clause shall not be broadcast with commercial sponsorship except as part of bona fide news programs and public affairs documentary programs. No part of such coverage or any recording thereof shall be used in any commercial advertisement.

(c) He may delegate any of his responsibilities under this clause to such legislative entity as he deems appropriate.

10. (a) There is hereby established in the House of Representatives an office to be known as the Office for the Bicentennial of the House of Representatives. This office will coordinate the planning of the commemoration of the two-hundredth anniversary of the House of Representatives.

(b) The management, supervision, and administration of the Office shall be under the direction of the Speaker of the House of Representatives and shall be staffed by a professional historian. The Historian shall be appointed by the Speaker of the House of Representatives without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person so appointed shall serve at the pleasure of the Speaker.

(c) All expenses of such office may be paid from the contingent fund of the House on vouchers solely approved and signed by the Speaker, until otherwise provided by law or resolution.

(d) The Office shall cease to exist not later than September 30, 1989, unless otherwise provided by law or resolution.

RULE III

There shall be elected by a viva voce vote, at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain, each of whom shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House; and each shall appoint all of the employees of his department provided for by law.

RULE III

DUTIES OF THE CLERK

1. The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by State in alphabetical order, and pending the election of a Speaker or Speaker pro tempore, preserve order and decorum, and decide all questions of order subject to appeal by any Members.

2. He shall make and cause to be printed and delivered to each Member, or mailed to his address, at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

3. He shall note all questions of order, with the decisions thereon, the record of which shall be printed as an appendix to the Journal of each session, and complete, as soon after the close of the session as possible, the printing and distribution to Members, Delegates, and the Resident Commissioner from Puerto Rico of the Journal of the House, together with an accurate and complete index; retain in the library at his office, for the use of the Members, Delegates, the Resident Commissioner from Puerto Rico and officers of the House and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State; deliver or mail to any Member, Delegate or the Resident Commissioner from Puerto Rico an extra copy, in binding of good quality, of each document requested by that Member, Delegate, or the Resident Commissioner which has been printed, by order of either House of the Congress, in any Congress in which he served; attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House, certify to the

passage of all bills and joint resolutions, make or approve all contracts, bargains, or agreements relative to furnishing any matter or thing, or for the performance of any labor for the House of Representatives, in pursuance of law or order of the House, keep full and accurate accounts of the disbursements out of the contingent fund of the House, keep the stationery and account of Members, Delegates, and the Resident Commissioner from Puerto Rico, and pay them as provided by law. He shall pay to the officers and employees of the House of Representatives the amount of their salaries that shall be due them.

4. He shall, in case of temporary absence or disability, designate an official in his office to sign all papers that may require the official signature of the Clerk of the House, and to do all other acts except such as are provided for by statute, they may be required under the rule and practice of the House to be done by the Clerk. Such official acts, when so done by the designated official, shall be under the name of the Clerk of the House. The said designation shall be in writing, and shall be laid before the House and entered on the Journal.

5. The Clerk is authorized to receive messages from the President and from the Senate at any time that the House is not in session.

6. He shall supervise the staff and manage any office of a Member who is deceased, has resigned, or been expelled until a successor is elected and shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the Member representing such district or other reason. Whenever the Clerk is acting as a supervisory authority over such staff, he shall have authority to terminate employees, and he may appoint, with the approval of the Committee on House Administration, such staff as is required to operate the office until a successor is elected. He shall maintain on the House payroll and supervise in the same manner staff appointed pursuant to section 800 of Public Law 91-655 (2 U.S.C. 31b-5) for sixty days following the death of a former Speaker.

RULE IV

DUTIES OF THE SERGEANT-AT-ARMS

1. It shall be the duty of the Sergeant-at-Arms to attend the House during its sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk, execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker, and keep the accounts for the pay and mileage of Members, Delegates, and the Resident Commissioner from

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 30, 1983

STATEMENT BY THE PRINCIPAL DEPUTY PRESS SECRETARY

The President today withheld approval of H.R. 4042, an enrolled bill that would require two Presidential certifications regarding El Salvador in 1984 or until the enactment of new legislation imposing conditions on U.S. military assistance for that country.

This Administration is firmly committed to the protection of human rights, economic and political reforms, the holding of elections, and progress in prosecuting the cases of murdered American citizens in El Salvador. However, the process of certification as called for in H.R. 4042 would not serve to support these endeavors.

His decision to oppose this certification legislation reflects the Administration's policy that such requirements distort our efforts to improve human rights, democracy, and recovery in El Salvador. The key certification provisions of the present bill are already addressed in this year's Continuing Resolution which requires a separate certification on progress in the area of land reform and withholds 30 percent of military assistance funds until the Government of El Salvador has completed the investigation and trial in the churchwomen's case.

At the same time, the President wishes to emphasize that the Administration remains fully committed to the support of democracy, reform, and human rights in El Salvador. Those very concerns are a central component of our policy. They were clearly articulated by our Ambassador Tom Pickering as recently as last Friday. The withholding of approval from H.R. 4042 in no way reflects a lessening of our interests in these critical areas. The President has also instructed the Department of State to continue to provide the Congress with periodic public reports--the next on January 16, 1984--on the political, economic, and military situation in El Salvador.

Working with the leadership of the Government of El Salvador, we will reconfirm our joint resolve to take whatever action is necessary to help the Government of El Salvador to end the reprehensible activities of the violent right as well as the violent left. The United States will also work to preserve and expand the progress that has been achieved in the area of land reform and to maintain the momentum toward holding open and democratic elections next year in accordance with the provision of the new constitution being prepared in El Salvador's Constituent Assembly.

There must exist a genuine awareness, both in the U.S. as well as in El Salvador, that our countries' strong and productive relationship can only be based on shared values in justice and democracy, and on concerted and sustained efforts to achieve these goals. We know that President Alvaro Magana of El Salvador shares these views, and we will remain in touch on developing enhanced efforts that will strengthen human rights ties.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. _____

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE HOUSE OF REPRESENTATIVES, ET AL.,
PLAINTIFFS,

-against-

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION, AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs herein respectfully move this Court, pursuant to Rule 65, Fed. R. Civ. P., and upon the annexed affidavit of Congressman Richard L. Ottinger, the Complaint and the Statement of Points and Authorities, separately filed, for the entry of a preliminary injunction, requiring defendant Geisler to deliver H.R. 4042, 98th Congress, 1st Session, to defendant Carmen, and requiring defendant Carmen to print H.R. 4042 as a law.

Respectfully submitted,

MICHAEL D. RATNER
MARGARET L. RATNER
ELLEN YAROSHEFSKY
MORTON STAVIS
PETER WEISS
ANNE E. SIMON

Dated: New York, N.Y.
January 4, 1984

5. I am reliably informed by counsel that the provisions of the Constitution relating to a pocket veto are not applicable to the circumstances herein because the ad-

jourment of Congress during which the President purported to act was only an intersession adjournment and Congress had designated appropriate officials to receive messages from the President during such adjournment.

6. On information and belief, the defendants herein, whose responsibility includes the delivery and publication of enrolled bills, have failed to do so, since they apparently accepted the view of the President that he has effectively vetoed H.R. 4042.

7. As a result of the foregoing, I suffer irreparable injury because:

a. My vote and the votes of my colleagues have been nullified;

b. In order to enforce the will of Congress as expressed in H.R. 4042, it will be necessary to undertake the burden of the legislative process a second time, which involves the reintroduction of legislation, the participation of committees in the House and Senate, and other procedures of Congress; and

c. Military aid will continue to be sent to El Salvador, despite the absence of the January 16, 1984 certification required by Congress that the government of El Salvador is making progress with regard to human rights and control over its armed forces, implementing economic and political reforms, holding free elections, and entering into good faith discussions to resolve the present conflict in El Salvador.

8. I have no adequate or complete remedy at law for the injuries set forth above.

I declare that the foregoing is true under the penalty of perjury.

/s/ Richard L. Ottinger
RICHARD L. OTTINGER

December 30, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE HOUSE OF REPRESENTATIVES, ET AL.,
PLAINTIFFS,

-against-

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION, AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

MOTION TO SHORTEN TIME FOR FILING OF
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION
AND TO SHORTEN TIME FOR ORAL HEARING ON
PRELIMINARY INJUNCTION

Plaintiffs herein respectfully request, upon the annexed declaration of Michael Ratner, Esq., and the Statement of Points and Authorities, separately filed, that the time of defendants to file an opposition to plaintiffs' Motion for Preliminary Injunction, filed January 4, 1984, be shortened so that defendants' opposition must be served no later than 5:00 p.m. January 9, 1984. Plaintiffs further request that an oral hearing on their Motion for Preliminary Injunction be set for January 11, 1984.

Respectfully submitted,
MICHAEL D. RATNER
MARGARET L. RATNER
ELLEN YAROSHEFSKY

MORTON STAVIS
 PETER WEISS
 ANNE E. SIMON
Center for Constitutional Rights
 853 Broadway
 New York, N.Y. 10003
 (212) 674-3303

JOHN PRIVATERA
 1302 18th Street, N.W.
 Washington, D.C. 20006
 (202) 785-8900

Attorneys for Plaintiffs

Dated: New York, N.Y.
 January 4, 1984

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, ET AL.,
 PLAINTIFFS,

-against-

GERALD P. CARMEN, ET. AL.,
 DEFENDANTS.

**DECLARATION OF MICHAEL RATNER IN SUPPORT OF
 MOTION TO SHORTEN TIME FOR DEFENDANTS TO SERVE
 AND FILE OPPOSITION AND TO SHORTEN TIME FOR
 ORAL ARGUMENT**

MICHAEL D. RATNER, hereby declares under penalty of perjury:

1. I am one of the attorneys for plaintiffs in this action, and make this declaration in support of plaintiffs' motion to shorten time for the briefing and hearing on plaintiffs' motion for a preliminary injunction requiring defendants to deliver and publish H.R. 4042 as a validly enacted law.

2. The injury to plaintiffs from defendants' failure to deliver and publish H.R. 4042 as law is ongoing, immediate, and irreparable. Plaintiffs' votes on H.R. 4042 have been nullified and a specific condition precedent placed on continued military aid to El Salvador has been nullified. *See*, Plaintiffs' Statement of Points and Authorities in Support of Motion for Preliminary Injunction, Point I (hereinafter, "PS").

3. As a result of two imminent events occurring prior to the time in which this case could normally be heard, the harm to plaintiffs will be rendered irreparable.

4. Under the certification requirements continued by H.R. 4042, *See* PS at Statement of Facts, the President is required to make a certification regarding human rights progress in El Salvador on January 16, 1984, if military aid to that country is to continue. Because the bill is not published as law, the President will not make the required certification on January 16, 1984. Therefore, beginning January 15, 1984, and until President Reagan makes the required certification, all military aid to El Salvador will be given without the certifications required by Congress. That aid, once given, cannot be retrieved. Therefore, plaintiffs must have a ruling prior to January 16, 1984.

5. The 98th Congress is scheduled to reconvene on January 23, 1984. If H.R. 4042 has not been published as law at that point, Congress will face the burden of having to reintroduce and repass a similar certification requirement. Only a court ruling from this Court before January 23, 1984 will ensure that Congress is not put to this additional burden. A court ruling after that date will be too late.

6. Defendants and their attorneys will be personally served on January 4, 1984, the date of filing.

7. Plaintiffs will suffer irreparable injury if a preliminary injunction is not issued quickly. Therefore, plaintiffs respectfully request that defendants' opposition should be filed and received by plaintiffs by 5:00 p.m., January 9, 1984, and further request that a hearing on the motion for a preliminary injunction be set for January 11, 1984. Plaintiffs will file their reply brief prior to the hearing. Such a schedule will hopefully enable this Court to issue a ruling prior to January 16, 1984.

8. I declare under penalty of perjury that the foregoing is true and correct.

WHEREFORE, I respectfully request that this Court issue an order shortening time for the briefing and hearing on the preliminary injunction.

MICHAEL D. RATNER

Executed in New York, N.Y.
January 4, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020
(Jackson, J.)

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,
-against-

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION, AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

NOTICE OF APPEAL

Notice is hereby given that plaintiffs Michael D. Barnes,
et al., above named, hereby appeal to the United States
Court of Appeals for the District of Columbia Circuit
from the order entered on January 9, 1984, the effect of
which is to deny plaintiffs the preliminary injunction relief
sought in the action below.

MICHAEL D. RATNER
MARGARET L. RATNER
ELLEN YAROSHEFSKY
ANNE E. SIMON
MORTON STAVIS
PETER WEISS

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(212) 674-3303

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Washington, D.C. 20036
(202) 785-8900

Counsels for Plaintiffs

Dated: January 10, 1984
New York, New York

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS-APPELLANTS,

-against-

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION; AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS-APPELLEES

IN RE MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS
CAPACITY AS A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PETITIONERS.

EMERGENCY MOTION FOR EXPEDITED APPEAL AND
DECISION THEREON OR FOR ISSUANCE OF
A WRIT OF MANDAMUS

Plaintiff Michael D. Barnes, member of Congress and chairman of the Subcommittee on Western Hemispheric Affairs of the House of Representatives, and thirty two other plaintiff members of Congress, by and through their attorneys request this Court to take emergency action either:

(1) granting an expedited appeal and ordering that a preliminary injunction issue requiring defendants to deliver and print H.R. 4042, 98th Cong, 1st Sess., as a law of the United States by or as close in time to January 16, 1984 as is possible; or

(2) granting expedited consideration of their petition for a writ of mandamus and directing the District Judge to forthwith and as close as possible in time to January 16, 1984 hold a hearing and render a decision on plaintiffs' request for a preliminary injunction directing the delivery and printing of H.R. 4042, 98th Cong., 1st Sess., as law.

TIMELINESS OF MOTION

This motion requests relief within seven days or as soon thereafter as possible. The motion could not have been filed earlier. Plaintiffs filed a motion and supporting memorandum for a preliminary injunction with the District Court on January 4, 1984, accompanied by a motion to shorten time thereon. On January 9, 1984 the District Court (Jackson, J.) heard argument on the motion to shorten time, denied said motion and set February 22, 1984 for a hearing on the preliminary injunction and the permanent injunction. (A. 129-130). Plaintiffs have filed these papers as soon thereafter as was possible.

Court action is necessary by or as close in time to January 16, 1984, to avoid irreparable injury to plaintiffs. Plaintiffs are members of Congress who voted for H.R. 4042, a bill imposing certain certification requirements on aid to El Salvador. These requirements take effect on January 16, 1984. Under the bill's provisions, aid to El Salvador is to cease until certification occurs. The President purportedly exercised a "pocket veto" of H.R. 4042 during an intersession of Congress despite Congress' appointment of a clerk to accept messages from the President. Plaintiffs contend that said "pocket veto" is unconstitutional and that H.R. 4042 is law. Without immediate relief, plaintiffs' votes for H.R. 4042 will be nullified; the restrictions that H.R. 4042 places on aid to El Salvador will not go into effect. Each day of delay after

January 16, 1984, will cause irreparable injury to the effectiveness of plaintiffs' votes. The accompanying memorandum discusses the factors which necessitate the requested emergency relief.

NOTICE AND SERVICE OF MOTION AND PAPERS

On January 10, 1984 counsel for plaintiffs spoke with Mark Johnston, an attorney with the Appellate Staff of the Department of Justice. I informed him of plaintiffs' intention to file this appeal and mandamus and the relief requested. He asked that the papers be personally served upon him, which will be done on January 11, 1984.

Respectfully submitted,

MICHAEL RATNER
MARGARET RATNER
ELLEN YAROSHEFSKY
ANNE E. SIMON
MORTON STAVIS
PETER WEISS

*Center for Constitutional Rights
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JOHN PRIVITERA
*1302 18th Street, N.W.
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(202) 785-8900*

Dated: New York, N.Y.
January 10, 1984

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5013

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.

No. 84-5014

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE

September Term, 1983

Filed Jan. 13, 1984

BEFORE: Tamm, Wilkey and Scalia, Circuit Judges

ORDER

Upon consideration of appellants/petitioners' emergency motions for expedited appeals and stay, or for issuance of a writ of mandamus, and of the response ordered by the Court, it is

ORDERED by the Court that the motions are denied. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958). It is

FURTHER ORDERED by the Court that the petition for writ of mandamus is denied.

Per Curiam

For the Court

/s/ Daniel M. Cathey

DAN'EL M. CATHEY
First Deputy Clerk

Circuit Judge Tamm did not participate in this order.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, ETC. ET AL.,
DEFENDANTS.

Judge Jackson

MOTION OF THE UNITED STATES SENATE TO INTERVENE

The United States Senate moves to intervene in this action pursuant to sections 703(c), 706(a), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(c), 288e(a), and 288l(a) (1982), Rule 24(a) of the Federal Rules of Civil Procedure, and S. Res. 313, 98th Cong., 2nd Sess. (1984), a copy of which is attached. This intervention is in support of the claim, under Article I, Section 7, Clause 2 of the Constitution, that H.R. 4042, 98th Congress, became law when the President did not return it with his objections to the House in which it had originated.

Section 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. § 288l(a) (1982), provides that intervention by the Senate as a party shall be of right and may only be denied on an express finding by the Court that intervention is untimely and would significantly delay the pending action or that standing to intervene has not been established under Article III, Section 2 of the Constitution.

The intervention of the Senate is timely and would not delay the pending action. The action was filed on January 4, 1984, and the Court has set argument for February 22, 1984. The Senate is filing with this motion to intervene a complaint in intervention and a motion for summary judgment. There are no facts in dispute. The defendants will have time under the rules of procedure to respond to the motion for summary judgment, and the Senate will have time to reply, without disturbing the argument date which the Court has established.

The Senate has Article III standing to intervene. The Senate and the House were granted leave to intervene in *Immigration and Naturalization Service v. Chadha*, 103 S.Ct. 2764, 2773 note 5, 2778 (1983), which also involved the procedures for exercising legislative power under Article I, Section 7 of the Constitution. The Senate passed H.R. 4042, 129 Cong. Rec. S16468 (daily ed. Part II, Nov. 17, 1983), and has a direct constitutional interest in the efficacy of its legislative action. *Kennedy v. Sampson*, 511 F.2d 430, 434-35 (D.C. Cir. 1974) (referring to concession by executive branch that Senate has standing to challenge constitutionality of presidential pocket veto). The appearance of the Senate as a party makes this interbranch dispute particularly suitable for adjudication. See *Goldwater v. Carter*, 444 U.S. 996, 997-98 (1979) (Justice Powell, concurring).

For these reasons, the motion of the United States Senate to intervene should be granted.

Respectfully submitted,

/s/ Michael Davidson

MICHAEL DAVIDSON

Senate Legal Counsel

M. ELIZABETH CULBRETH

Deputy Senate Legal Counsel

MORGAN J. FRANKEL

Assistant Senate Legal Counsel

*642 Hart Senate Office Building
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(202) 224-4435*

Counsel for United States Senate

Dated: January 27, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

AND UNITED STATES SENATE,
APPLICANT IN INTERVENTION

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

Judge Jackson

COMPLAINT OF INTERVENOR FOR DECLARATORY RELIEF

The United States Senate, applicant in intervention, by its Counsel, alleges:

JURISDICTION AND VENUE

1. This action arises under Article I, Section 7, Clause 2 of the United States Constitution and 1 U.S.C. §§ 106a, 112, and 113 (1982). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 2201 (1976).

2. Venue in this Court is proper under 28 U.S.C. § 1391 (1976).

INTERVENOR

3. The United States Senate passed H.R. 4042, 98th Congress, and caused it to be enrolled and signed and

returned to the House of Representatives for presentation to the President, pursuant to Article I, Section 7, Clause 2, of the United States Constitution.

DEFENDANTS

4. Defendant Ronald Geisler is the Executive Clerk for the White House Office. He failed to deliver H. R. 4042 to the Administrator of General Services even though the President had not returned H. R. 4042 to the House of Representatives with his objections within ten days (Sundays excepted) of its presentment to him.

5. Defendant Gerald P. Carmen is the Administrator of General Services. He has failed to publish H. R. 4042 as a slip law or in the Statutes at Large of the United States.

FACTS

6. The House of Representatives passed H. R. 4042 on September 30, 1983.

7. The Senate passed H. R. 4042 without amendment on November 17, 1983.

8. The Speaker of the House signed H. R. 4042 on November 18, 1983.

9. The President Pro Tempore of the Senate signed H. R. 4042 on November 18, 1983.

10. The Committee on House Administration of the House of Representatives presented H. R. 4042 to the President on November 18, 1983.

11. The Ninety-eighth Congress adjourned its first session on November 18, 1983, and, by joint resolution, established January 23, 1984, as the date of the commencement of its second session.

11. The Clerk of the House of Representatives is authorized to receive messages from the President at any time that the House is not in session.

12. The President neither signed H. R. 4042 nor returned it to the House of Representatives on or before November 30, 1983, but on that date he announced that he was withholding his approval of the bill.

13. The Executive Clerk of the White House did not deliver H. R. 4042 to the Administrator for General Services.

14. The Administrator of General Services has not published H. R. 4042 as a public law of the United States.

15. The Ninety-eighth Congress convened its second session on January 23, 1984.

STATEMENT OF THE CLAIM

16. Under Article I, Section 7, Clause 2, of the United States Constitution, H. R. 4042 became law when the President did not return it to the House of Representatives with his objections within ten days (Sundays excepted) of its presentment to him.

17. The failure of the defendant Executive Clerk for the White House to deliver H. R. 4042 to the Administrator of General Services is a violation of 1 U.S.C. § 106a (1982).

18. The failure of the defendant Administrator of General Services to receive H. R. 4042 from the Executive Clerk for the White House is a violation of 1 U.S.C. § 106a (1982).

19. The failure of the defendant Administrator of General Services to publish H. R. 4042 as a slip law and in the United States Statutes at Large is a violation of 1 U.S.C. §§ 112, 113 (1982).

20. These constitutional and statutory violations of defendants have deprived the intervenor United States Senate of its constitutional role in the enactment of legislation and have nullified the votes of members of the United States Senate for the passage of H. R. 4042.

RELIEF

WHEREFORE INTERVENOR PRAYS:

A. That this Court declare that H. R. 4042, 98th Congress, is a duly enacted public law of the United States and that the defendants are under a duty to have H. R. 4042 delivered and published as a slip law and in the United States Statutes at Large.

B. That this Court award such other and further relief as may be just and equitable.

Respectfully submitted,

/s/ Michael Davidson

MICHAEL DAVIDSON
Senate Legal Counsel

M. ELIZABETH CULBRETH
Deputy Senate Legal Counsel

MORGAN J. FRANKEL
Assistant Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435

Counsel for United States Senate

Dated: January 27, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION, AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, through their undersigned attorneys, hereby move the Court pursuant to Rule 65, Fed. R. Civ. Pro., for the entry of summary judgment in their favor on the grounds there are no triable issues of material fact and the defendants are entitled to judgment as a matter of law. This motion is supported by the accompanying memorandum of points and authorities, the Declaration of Ronald R. Geisler and a statement of material facts as to which there is no genuine issue.

Respectfully submitted,

/s/ Richard Willard

RICHARD K. WILLARD
Acting Assistant Attorney
General, Civil Division

JOSEPH E. DEGENOVA
United States Attorney

/s/ David J. Anderson

DAVID J. ANDERSON

/s/ Judith F. Ledbetter

JUDITH F. LEDBETTER

/s/ Janet M. McClintock

JANET M. MCCLINTOCK

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Attorneys for defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION, AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

1. On November 18, 1983, H.R. 4042 was presented to the President for his approval. Geisler Decl. ¶2.
2. On November 18, 1983, both houses of the 98th Congress completed the business of their first session and adjourned *sine die*. H. Con. Res. 221; 129 Cong. Rec. S16779, S16858, S17192-3, H10469 (daily ed. Nov. 16, 1983); 129 Cong. Rec. H10105 (daily ed. Nov. 16, 1983).
3. Neither at the end of the first session of the 98th Congress, nor at any other time during this adjournment, did the House of Representatives formally notify the President by letter or resolution that an agent had been appointed to receive messages from him and, in particular, to receive vetoed bills with his objections to them. Geisler Decl. ¶4.

4. The President's ten days (Sundays excepted) for approving H.R. 4042 expired on November 30, 1983.

5. On November 30, 1983, the White House issued a statement announcing that the President was withholding his approval from H.R. 4042. 19 Weekly Comp. Pres. Doc. 1627-28 (Nov. 30, 1983).

6. The President did not return H.R. 4042, with his objections to the House of Representatives, where it had originated. Geisler Decl. ¶3.

7. The 98th Congress convened its second session on January 23, 1984. 130 Cong. Rec. S1, H1 (daily ed. Jan. 23, 1984).

Respectfully submitted,

/s/ Richard K. Willard

RICHARD K. WILLARD
Acting Assistant Attorney
General, Civil Division

JOSEPH E. DEGENOVA
United States Attorney

/s/ David J. Anderson

DAVID J. ANDERSON

/s/ Judith F. Ledbetter

JUDITH F. LEDBETTER

/s/ Janet M. McClintock

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Attorneys for defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE GENERAL SERVICES
ADMINISTRATION; AND RONALD GEISLER, INDIVIDUALLY AND
IN HIS CAPACITY AS THE EXECUTIVE CLERK OF THE
WHITE HOUSE,
DEFENDANTS.

DECLARATION OF RONALD R. GEISLER

I, Ronald R. Geisler, do hereby depose and say:

1. I am the Executive Clerk of the White House, a position I have held since January 1982. In addition, I have been on the staff of this office since 1965. In my official capacity I am responsible for receiving all bills and resolutions sent by the Congress to the President and for delivering messages from the President to the Congress. Part of my duties includes accepting bills presented to the President, keeping records of the exact disposition of such bills, and delivering veto messages to the Congress. In connection with these duties I have ascertained the following:

2. On November 18, 1983, H.R. 4042 was presented to President Reagan for his consideration.

3. President Reagan did not return H.R. 4042 with his objections to the House of Representatives, the House from which the bill originated.

4. Neither at the end of the first session of the 98th Congress, nor at any other time during this adjournment, did the House of Representatives formally notify the President by letter or resolution that agents had been appointed to receive messages from him, and, in particular, to receive vetoed bills, with his objections to them.

5. Part of my duties includes maintaining records kept by past Executive Clerks and keeping accurate records of all bills presented to the President and their disposition. Based upon a review of those records I have ascertained the following:

a. Appendix I to the Points and Authorities in Support of Defendant's Motion for Summary Judgment and in Opposition to the Plaintiff's Motion for a Preliminary and Permanent Injunction contains an accurate listing of the vetoes exercised by Presidents Reagan and Carter;

b. President Carter returned S. 2096, "An Act to provide for a study by the Secretary of Health, Education, and Welfare of the long-term health effects in humans of exposure to dioxins," to the Secretary of the Senate on January 2, 1980, after the Senate had adjourned its first session of the 96th Congress, but while the House was still in session;

c. President Reagan pocket vetoed H.R. 4353, "An Act to amend the Act entitled 'An Act to establish a uniform Law on the Subject of Bankruptcies', approved November 6, 1978," on December 30, 1981 during an intersession adjournment between the first and second sessions of the 97th Congress.

6. It is part of my duties to physically deliver a veto message from the President to the floor of the House or Senate while it is in session. To deliver the veto message I, or member of my staff, must go directly to the floor and ask the Doorkeeper of the House of Representatives or the Secretary for the Majority of the Senate, to an-

nounce my presence to the Speaker of the House or the President of the Senate, respectively. Upon receiving recognition of the chair, I announce:

Mr. Speaker (Mr. President), I am directed by the President of the United States to deliver to the House of Representatives (Senate) a message in writing.

I hand the Doorkeeper or Secretary the veto message which, together with the bill, is contained in an envelope sealed with the Presidential seal. He then carries it to the dias where the envelope is opened and the message is read aloud by a reading clerk. If I am unable to deliver the message as outlined above, my deputy, Daniel Marks, or assistants, Douglas Chirdon or G. Timothy Saunders, the three other persons within the Executive Clerk's Office with floor privileges, will deliver the message.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

DATED: January 30, 1984

/s/ Ronald R. Geisler
RONALD R. GEISLER

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil Action No. 84-00020

MICHAEL D. BARNES, INDIVIDUALLY/MEMBER;
U.S. HOUSE OF REPRESENTATIVES, ET AL.,
APPELLANT

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION, ET AL.

September Term, 1983

Filed Jan. 30, 1984

BEFORE: Tamm, Wilkey and Scalia, Circuit Judges

ORDER

On consideration of Appellants' motion to dismiss appeal, it is

ORDERED by the Court that the aforesaid motion is granted and the above appeal is hereby dismissed.

The Clerk is directed to send a certified copy of this order to the District Court.

Per Curiam

For The Court:

GEORGE A. FISHER, *Clerk*

By: /s/ Daniel M. Cathey

DANIEL M. CATHEY
First Deputy Clerk

Circuit Judge Tamm did not participate in this Order.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ET AL.,
PLAINTIFFS,

AND UNITED STATES SENATE,
INTERVENOR,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

Filed Feb. 1, 1984

ORDER

Upon consideration of the motion of the United States Senate to intervene and the entire record in this case, it is this 31st day of January, 1984.

ORDERED That the motion to intervene be and it is hereby granted.

/s/ Thomas P. Jackson

THE HONORABLE THOMAS P. JACKSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

and

UNITED STATES SENATE,
APPLICANT IN INTERVENTION,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

JUDGE JACKSON

INTERVENOR'S MOTION FOR SUMMARY JUDGMENT

Intervenor, the United States Senate, by its undersigned counsel, hereby moves, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of summary judgment. Pursuant to Local Rule 1-9(b), (h), this motion is accompanied by a statement of material facts not in genuine issue and a memorandum of points and authorities. These documents demonstrate that there are no disputed material facts and that the intervenor is entitled to entry of judgment as a pure matter of law.

Respectfully submitted,

/s/ Michael Davidson

MICHAEL DAVIDSON

Senate Legal Counsel

M. ELIZABETH CULBRETH

Deputy Senate Legal Counsel

MORGAN J. FRANKEL

Assistant Senate Legal Counsel

642 Hart Senate Office Building

Washington, D.C. 20510

(202) 224-4435

Counsel for United States Senate

Dated: January 27, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,

PLAINTIFFS,

and

UNITED STATES SENATE,
APPLICANT IN INTERVENTION,

v.

GERALD P. CARMEN, ETC., ET AL.,

DEFENDANTS.

JUDGE JACKSON

INTERVENOR'S STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

1. The House of Representatives passed H.R. 4042 on September 30, 1983. 120 Cong. Rec. H7777 (daily ed. Sept. 30, 1983).
2. The Senate passed H.R. 4042 without amendment on November 17, 1983. 129 Cong. Rec. S16468 (daily ed. Nov. 17, 1983).
3. The Ninety-eighth Congress adjourned its first session on November 18, 1983, and, by joint resolution, established January 23, 1984, as the date of the commencement of its second session. H. Con. Res. 221, H.J. Res. 421, 98th Cong., 1st Sess. (1983); 129 Cong. Rec. S16779 (daily ed. Part I, Nov. 18, 1983); 129 Cong. Rec. H10469 (daily ed. Part I, Nov. 18, 1983).
4. The Speaker of the House signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. H10469 (daily ed. Part I, Nov. 18, 1983).

5. The President Pro Tempore of the Senate signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. S16948 (daily ed. Part II, Nov. 18, 1983).

6. The Committee on House Administration of the House of Representatives presented H.R. 4042 to the President on November 18, 1983. 129 Cong. Rec. H10663 (daily ed. Dec. 14, 1983).

7. The House of Representatives has authorized the Clerk of the House to receive messages from the President at any time that the House is not in session. Rule III, Clause 5 of the Rules of the House of Representatives; 129 Cong. Rec. H22 (daily ed. Jan. 3, 1983).

8. The President neither signed H.R. 4042 nor returned it to the House of Representatives on or before November 30, 1983, but on that date he announced that he was withholding his approval of the bill. 19 Weekly Comp. of Pres. Doc. 1627 (Nov. 30, 1983).

9. The Executive Clerk of the White House did not deliver H.R. 4042 to the Administrator of General Services.

10. The Administrator of General Services has not published H.R. 4042 as a public law of the United States.

11. The Ninety-eighth Congress convened its second session on January 23, 1984. 130 Cong. Rec. S1 (daily ed. Jan. 23, 1984); 130 Cong. Rec. H1 (daily ed. Jan. 23, 1984).

Respectfully submitted,

/s/ Michael Davidson

MICHAEL DAVIDSON

Senate Legal Counsel

M. ELIZABETH CULBRETH

Deputy Senate Legal Counsel

MORGAN J. FRANKEL

Assistant Senate Legal Counsel

642 Hart Senate Office Building

Washington, D.C. 20510

(202) 224-4435

Counsel for United States Senate

Dated: January 27, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,

AND UNITED STATES SENATE,
INTERVENOR,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION, ET AL.,
DEFENDANTS.

Judge Jackson

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Michael D. Barnes, *et al.*, by their undersigned counsel, hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of summary judgment. Pursuant to Local Rule 1-9(b), (h), this motion is accompanied by a Statement of Material Facts Not in Genuine Issue and a Memorandum of Points and Authorities. These documents demonstrate that there are no disputed material facts and that the plaintiffs are entitled to entry of judgment as a matter of law.

Respectfully submitted,

MICHAEL RATNER
MARGARET RATNER
ANNE E. SIMON
ELLEN YAROSHEFSKY
MORTON STAVIS
PETER WEISS

Center for Constitutional Rights
853 Broadway
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Counsel for plaintiffs
MICHAEL D. BARNES, *et al.*

New York, New York
February 5, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,

AND UNITED STATES SENATE,
INTERVENOR,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION, ET AL.,
DEFENDANTS.

Judge Jackson

PLAINTIFFS' STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

1. The House of Representatives passed H.R. 4042 on September 30, 1983. 129 Cong. Rec. H7777 (daily ed. Sept. 30, 1983).

2. Plaintiffs Michael D. Barnes, Gary Ackerman, Howard Berman, John Conyers, Ronald V. Dellums, Mervyn Dymally, Dennis Eckart, Robert Edgar, Vic Fazio, Ed Feighan, Barney Frank, Robert Garcia, Samuel Gejdenson, Peter Kostmeyer, Mickey Leland, Mel Levine, Robert Matsui, Matt McHugh, Edward Markey, Barbara A. Mikulski, Bruce Morrison, Mary Rose Oakar, James Oberstar, Richard Ottinger, Patricia Schroeder, Ferdinand St. Germain, Gerry Studds, Robert Torricelli, Bruce

Vento, Ted Weiss, and Howard Wolpe, all Members of Congress, on information and belief, voted in favor of H.R. 4042 on September 30, 1983.

3. The Senate passed H.R. 4042 without amendment on November 17, 1983. 129 Cong. Rec. S16468 (daily ed. Nov. 17, 1983).

4. The Ninety-eighth Congress adjourned its first session on November 18, 1983, and, by joint resolution, established January 23, 1984, as the date of the commencement of its second session. H. Con. Res. 221, H.J. Res. 421, 98th Cong., 1st sess. (1983); 129 Cong. Rec. S16779 (daily ed. Part I, Nov. 18, 1983); 129 Cong. Rec. H10469 (daily ed. Part I, Nov. 18, 1983).

5. The Speaker of the House signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. H10469 (daily ed. Part I, Nov. 18, 1983).

6. The President Pro Tempore of the Senate signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. S16948 (daily ed. Part II, Nov. 18, 1983).

7. The Committee on House Administration of the House of Representatives presented H.R. 4042 to the President on November 18, 1983. 129 Cong. Rec. H10663 (daily ed. Dec. 14, 1983).

8. The House of Representatives has authorized the Clerk of the House to receive messages from the President at any time that the House is not in session. Rule III, Clause 5 of the Rules of the House of Representatives; 129 Cong. Rec. H22 (daily ed. Jan. 3, 1983).

9. The President neither signed H.R. 4042 nor returned it to the House of Representatives on or before November 30, 1983, but on that date he announced that he was withholding his approval of the bill. 19 Weekly Comp. of Pres. Doc. 1627 (Nov. 30, 1983).

10. The Executive Clerk of the White House did not deliver H.R. 4042 to the Administrator of General Services.

11. The Administrator of General Services has not published H.R. 4042 as a public law of the United States.

12. The Ninety-eighth Congress convened its second session on January 23, 1984. 130 Cong. Rec. S1 (daily ed. Jan. 23, 1984); 130 Cong. Rec. H1 (daily ed. Jan. 23, 1984).

Respectfully submitted,

MICHAEL RATNER
MARGARET RATNER
ANNE E. SIMON
ELLEN YAROSHEFSKY
MORTON STAVIS
PETER WEISS

Center for Constitutional Rights
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Counsel for plaintiffs
MICHAEL D. BARNES, *et al.*

New York, New York
February 5, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, INDIVIDUALLY AND IN HIS CAPACITY AS
A MEMBER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, ET AL.,
PLAINTIFFS,
AND UNITED STATES SENATE,
INTERVENOR,

v.

GERALD P. CARMEN, INDIVIDUALLY AND IN HIS CAPACITY AS
ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION, ET AL.,
DEFENDANTS.

Feb. 10, 1984

Judge Jackson

DECLARATION OF MICHAEL RATNER IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

MICHAEL D. RATNER hereby declares under penalty of perjury:

1. I am one of the attorneys for plaintiffs in this action, and make this declaration in support of plaintiffs' motion for summary judgment and in opposition to defendants' motion for summary judgment.

2. Annexed hereto is the original of an affidavit executed by Plaintiff Michael D. Barnes on January 3, 1984, stating that he voted in favor of H.R. 4042 on September 30, 1983.

3. Plaintiffs' Statement of Material Facts as to Which There is No Genuine Issue adds only one paragraph to the Statement of Material Facts filed by the United States Senate. That paragraph, Number 2, recites the list of plaintiffs who voted in favor of H.R. 4042. Plaintiffs' motion should, therefore, cause no delay in these proceedings.

4. However, plaintiffs believe that defendants' Statement of Material Facts omits certain material facts, and contains facts which are not material and may be misleading.

5. Defendants' Statement omits that both the House of Representatives and the Senate passed H.R. 4042, and that both the Speaker of the House and the President Pro Tempore of the Senate signed H.R. 4042 on November 18, 1983.

6. Defendants also omit the fact that under Rule III, cl. 5 of the Rules of the House of Representatives the House has authorized the Clerk of the House to receive messages from the President at any time that the House is not in session. *See* Intervenor's and Plaintiffs' Statement. As is explained in plaintiffs' brief and reply, this is clearly a material fact.

7. Defendants claim that it is a material fact that the "House of Representatives [did not] formally notify the President by letter or resolution that an agent had been appointed to receive messages from him and, in particular, to receive vetoed bills with his objections to them." *See* Defendants' Statement No. 3. As is demonstrated in both plaintiffs' brief, reply brief, and intervenors' brief, there is no legal requirement in the present circumstances for the House to "formally notify" the President that the Clerk can receive messages from him.

8. Defendants' "Statement" No. 2 may be misleading. It states that both houses of the 98th Congress "completed the business of their first session. . . ." As is well known,

the business from the first session of Congress carries over to the second session. Rule XXVI and Annotation, Rules of the House of Representatives. If by this paragraph defendants imply that there is an end to business of the first session, this paragraph is inaccurate.

9. For the reasons expressed above, as well as those in the accompanying brief, plaintiffs believe that their Statement of Material Facts, and not defendants', should be accepted.

10. I declare under penalty of perjury that the foregoing is true and correct.

MICHAEL RATNER

New York, New York
February 5, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, ET AL.,
DEFENDANTS.

AFFIDAVIT

COMES NOW the undersigned, MICHAEL D. BARNES, and on oath, deposes and states as follows:

1. That I am the member of the United States Congress from the Eighth Congressional District of Maryland.
2. That I was on the floor of the United States Congress on September 30, 1983, and at that time voted in favor of H.R. 4042.

I HEREBY CERTIFY under the penalties of perjury that the foregoing statements of fact are true and correct based upon my own personal knowledge, information and belief, and that I am competent to testify thereto.

/s/ Michael Barnes
MICHAEL D. BARNES

STATE OF MARYLAND:
COUNTY OF MONTGOMERY to wit:

SUBSCRIBED and sworn to before me this 3rd day of January 1984.

/s/ Michael Henry, Jr.
Notary Public

My Commission Expires: June 30, 1987

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

AND

UNITED STATES SENATE, INTERVENOR,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

JUDGE JACKSON

INTERVENOR'S STATEMENT OF GENUINE ISSUE

Contrary to defendants' assertion, Defendants' Statement of Material Facts ¶3, the Court may take judicial notice of the fact that the President was formally notified at the beginning of the first session of the Ninety-eighth Congress that the Clerk of the House of Representatives was authorized to receive messages from the President at any time that the House was not in session. 44 U.S.C. § 906 (1976) (President furnished with copies of Congressional Record for use of Executive Office); 129 Cong. Rec. H 22 (daily ed. Jan. 3, 1983) (House of Representatives adopted House Rule III, Clause 5).

Respectfully submitted,

/s/ Michael Davidson

MICHAEL DAVIDSON

Senate Legal Counsel

M. ELIZABETH CULBRETH

Deputy Senate Legal Counsel

MORGAN J. FRANKEL

*Assistant Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435*

Counsel for United States Senate

Dated: February 8, 1984

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

**MOTION OF THE HONORABLE THOMAS P. O'NEILL, JR.,
SPEAKER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES; THE HONORABLE JIM WRIGHT,
MAJORITY LEADER OF THE UNITED STATES HOUSE OF
REPRESENTATIVES; THE HONORABLE ROBERT H.
MICHEL, MINORITY LEADER OF THE UNITED STATES
HOUSE OF REPRESENTATIVES; THE HONORABLE
THOMAS S. FOLEY, MAJORITY WHIP OF THE UNITED
STATES HOUSE OF REPRESENTATIVES; AND THE
HONORABLE TRENT LOTT, MINORITY WHIP OF THE
UNITED STATES HOUSE OF REPRESENTATIVES, TO
INTERVENE**

Movants, the Speaker, and the bipartisan elected leadership of the United States House of Representatives, hereby move for leave to intervene as a Plaintiff in this action pursuant to Rule 24(a) and (b), Federal Rules of Civil Procedure, for the purpose of seeking declaratory and injunctive relief against the Defendants. Movants further seek to intervene to assert that, pursuant to the operation of Article I, Section 7, clause 2 of the United States Constitution, that the bill, H.R. 4042 of the 98th Congress, has become a duly enacted public law.

In support of this motion, the movants refer the Court to the attached Memorandum of Points and Authorities.

Respectfully submitted,

/s/ Steven R. Ross

STEVEN R. ROSS

General Counsel to the Clerk

/s/ Michael L. Murray

MICHAEL L. MURRAY

Assistant Counsel to the Clerk

Attorneys for Movants

U.S. House of Representatives

The Capitol, H-105

Washington, D.C. 20515

(202) 225-9700

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

INTERVENORS

THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER;
THE HONORABLE JIM WRIGHT, MAJORITY LEADER; THE
HONORABLE ROBERT H. MICHEL, REPUBLICAN LEADER;
THE HONORABLE THOMAS S. FOLEY, MAJORITY WHIP;
THE HONORABLE TRENT LOTT, MINORITY WHIP,
COMPLAINT

The Speaker and elected bipartisan leadership of the United States House of Representatives, applicants in intervention, by the undersigned counsel, allege:

JURISDICTION AND VENUE

1. This action arises under Article I, Section 7, Clause 2 of the United States Constitution and 1 U.S.C. §§ 106a, 112, and 113 (1982). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 2201 (1976).

2. Venue in this Court is proper under 28 U.S.C. § 1391 (1976).

3. The Speaker and elected bipartisan leadership of the United States House of Representatives passed H.R. 4042, 98th Congress, and caused it to be enrolled and signed and presented to the President, pursuant to Article I, Section 7, Clause 2 of the United States Constitution.

DEFENDANTS

4. Defendant Ronald Geisler is the Executive Clerk for the White House Office. He failed to deliver H.R. 4042 to the Administrator of General Services even though the President had not returned H.R. 4042 to the House of Representatives with his objections within ten days (Sundays excepted) of its presentment to him.

5. Defendant Gerald P. Carmen is the Administrator of General Services. He has failed to publish H.R. 4042 as a slip law or in the Statutes at Large of the United States.

FACTS

6. The House of Representatives adopted the Rules of the House of Representatives, including Rule III, clause 5 for the 98th Congress on January 3, 1983. 129 *Cong. Rec. H 22* (daily ed., January 3, 1983).

7. The House of Representatives passed H.R. 4042 on September 30, 1983.

8. The Senate passed H.R. 4042 without amendment on November 17, 1983.

9. Intervenor, the Speaker of the House, signed H.R. 4042 on November 18, 1983.

10. The President Pro Tempore of the Senate signed H.R. 4042 on November 18, 1983.

11. The Committee on House Administration of the House of Representatives, of which Intervenor Thomas S. Foley is a member, presented H.R. 4042 to the President on November 18, 1983.

12. The Ninety-Eighth Congress adjourned its First Session on November 18, 1983, and, by joint resolution, established January 23, 1984, as the date of the commencement of its Second Session.

13. The Clerk of the House of Representatives is, pursuant to Rule III, Clause 5 of the Rules of the House, authorized to receive messages from the President at any time that the House is not in session.

14. The President neither signed H.R. 4042, nor returned it to the House of Representatives on or before November 30, 1983, but on that date he announced that he was withholding his approval of the bill.

15. The Executive Clerk of the White House did not deliver H.R. 4042 to the Administrator of General Services.

16. The Administrator of General Services has not published H.R. 4042 as a public law of the United States.

17. On Wednesday, December 14, 1983, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 *Cong. Rec. H 3* (daily ed., January 23, 1984).

18. On Wednesday, December 21, 1983, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 *Cong. Rec. H 3* (daily ed., January 23, 1984).

19. On Thursday, January 12, 1984, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 *Cong. Rec. H 3* (daily ed., January 23, 1984).

20. The Ninety-Eighth Congress convened its Second Session on January 23, 1984.

21. On January 23, 1984, the Speaker laid before the House a letter from the Clerk of the House which detailed the date and time of his receipt of the three Presidential messages referred to in paragraphs 17, 18, and 19 above.

STATEMENT OF THE CLAIM

22. Under Article I, Section 7, clause 2 of the United States Constitution, H.R. 4042 became law when the President did not return it to the House of Representatives with his objections within ten days (Sundays excepted) of its presentment to him.

23. The failure of the defendant Executive Clerk for the White House to deliver H.R. 4042 to the Administrator of General Services is a violation of 1 U.S.C. § 106a (1982).

24. The failure of defendant Administrator of General Services to receive H.R. 4042 from the Executive Clerk for the White House is a violation of 1 U.S.C. § 106a (1982).

25. The failure of the defendant Administrator of General Services to publish H.R. 4042 as a slip law and in the United States Statutes at Large is a violation of 1 U.S.C. §§ 112, 113 (1982).

26. These constitutional and statutory violations of defendants have deprived the intervenors and the United States House of Representatives of their constitutional role in the enactment of legislation.

RELIEF

A. That this Court declare that H.R. 4042, 98th Congress, is a duly enacted public law of the United States and that the defendants are under a duty to have H.R. 4042 delivered and published as a slip law and in the United States Statutes at large.

B. That this Court award such other and further relief as may be just and equitable.

Respectfully submitted,

/s/ Steven R. Ross

STEVEN R. ROSS

General Counsel to the Clerk

/s/ Michael L. Murray

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 84-0020

MICHAEL D. BARNES, ETC., ET AL.,
PLAINTIFFS,

v.

GERALD P. CARMEN, ETC., ET AL.,
DEFENDANTS.

INTERVENORS' MOTION FOR SUMMARY JUDGMENT

Intervenors, the Speaker, and elected bipartisan leadership of the United States House of Representatives, by the undersigned counsel, hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of summary judgment. Pursuant to Local Rules 1-9(b), (h), this motion is accompanied by a statement of material facts not in genuine issue and a memorandum of points and authorities. These documents demonstrate that there are no disputed material facts and that the intervenor is entitled to entry of judgment as a pure matter of law.

Respectfully submitted,

/s/ Steven R. Ross

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General Counsel to the Clerk

/s/ Michael L. Murray

MICHAEL L. MURRAY

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v.

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DEFENDANTS.

INTERVENORS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

1. The House of Representatives adopted the Rules of the House for the 98th Congress, including Rule III, clause 5, on January 3, 1983. 129 Cong. Rec., H22 (daily ed., January 3, 1983).
2. The House of Representatives passed H.R. 4042 on September 30, 1983. 129 Cong. Rec. H7777 (daily ed. September 30, 1983).
3. The Senate passed H.R. 4042 without amendment on November 17, 1983. 129 Cong. Rec. S16468 (daily ed. November 17, 1983).
4. The Ninety-Eighth Congress conditionally adjourned its First Session on November 18, 1983, and, by joint resolution, established January 23, 1984, as the date of the commencement of its Second Session. H. Con. Res. 221, Res. 421, 9th Cong., 1st Sess. (1983); 129 *Cong. Rec.* S16779 (daily ed., Part I, November 18, 1983).
5. Intervenor, the Speaker of the House, signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. H10469 (daily ed., Part I, November 18, 1983).

6. The President Pro Tempore of the Senate signed H.R. 4042 on November 18, 1983. 129 Cong. Rec. S16948 (daily ed., Part II, November 18, 1983).

7. The Committee on House Administration of the House of Representatives, of which intervenor Thomas S. Foley is a member, presented H.R. 4042 to the President on November 18, 1983. 129 Cong. Rec. H10663 (daily ed., December 14, 1983).

8. The House of Representatives has authorized the Clerk of the House to receive messages from the President at any time that the House is not in session. Rule III, clause 5 of the Rules of the House of Representatives; 129 Cong. Rec. H22 (daily ed., January 3, 1983).

9. The President neither signed H.R. 4042, nor returned it to the House of Representatives on or before November 30, 1983, but on that date he announced that he was withholding his approval of the bill. 19 *Weekly Comp. of Pres. Doc.* 1627 (November 30, 1983).

10. The Executive Clerk of the White House did not deliver H.R. 4042 to the Administrator of General Services.

11. The President has returned several bills with objections to the House during an adjournment by delivering a message to the Clerk of the House. 128 *Cong. Rec.* H3972 (daily ed., June 28, 1982); 129 Cong. Rec. H8471-8472 (daily ed., October 20, 1983); 128 *Cong. Rec.* H3130 (daily ed., June 2, 1982); 128 Cong. Rec. H3984 (daily ed., July 12, 1982); 128 Cong. Rec. H6743 (daily ed., September 8, 1982); 128 Cong. Rec. H8515 (daily ed., November 29, 1982); 129 Cong. Rec. H6690-1 (daily ed., September 12, 1983).

12. On Wednesday, December 14, 1983, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 Cong. Rec. H3 (daily ed., January 23, 1984).

13. On Wednesday, December 21, 1983, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 Cong. Rec. H3 (daily ed., January 23, 1984).

14. On Thursday, January 12, 1984, the Clerk of the House received a message to the House from the President under the Impoundment Control Act of 1974, transmitted pursuant to 2 U.S.C. § 685(a). 130 Cong. Rec. H3 (daily ed., January 23, 1984).

15. The Ninety-Eighth Congress convened its Second Session on January 23, 1984. 130 Cong. Rec. S1 (daily ed., January 23, 1984); 130 Cong. Rec. H1 (daily ed., January 23, 1984).

16. On January 23, 1984, the Speaker laid before the House a letter from the Clerk which detailed the date and the time of his receipt of three Presidential messages referred to in paragraphs 11, 12, and 13 above. 130 Cong. Rec. H3 (daily ed., January 23, 1984).

Respectfully submitted,

/s/ Steven R. Ross

STEVEN R. ROSS

General Counsel to the Clerk

/s/ Michael L. Murray

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Supreme Court of the United States

No. 85-781

FRANK G. BURKE, ACTING ARCHIVIST OF THE
UNITED STATES AND RONALD GEISLER, EXECUTIVE CLERK
OF THE WHITE HOUSE, PETITIONERS

v.

MICHAEL D. BARNES, ET AL.

ORDER ALLOWING CERTIORARI.

Filed March 3, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.